IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARENCE INGRAM A/K/A
CLARENCE EDWARD RAGLAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56641

FILED

NOV 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary, possession of stolen property, and obtaining money by false pretenses. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. Appellant Clarence Ingram alleges six errors on appeal.

First, Ingram argues that the district court erred in denying his motion to dismiss the indictment based on inadequate Marcum notice. See NRS 172.241(2); see also Sheriff v. Marcum, 105 Nev. 824, 827, 783 P.2d 1389, 1391 (1989) (requiring State to provide reasonable notice before defendant is indicted by a grand jury). Because Ingram failed to pursue a pretrial remedy through a writ of mandamus, Ingram's claim is governed by our opinion in Lisle v. State. See 113 Nev. 540, 551, 937 P.2d 473, 480 (1997) ("A writ of mandamus is an appropriate remedy for inadequate notice of a grand jury hearing."), decision clarified on denial of reh'g, 114 Nev. 221, 954 P.2d 744 (1998). In Lisle we held that an appellant who fails to seek a writ of mandamus must demonstrate on appeal that inadequate Marcum notice resulted in prejudice. Id. at 551-52, 937 P.2d at 480. Ingram has failed to satisfy this requirement because he was convicted after trial beyond a reasonable doubt and therefore his claim

lacks merit. Lisle v. State, 114 Nev. 221, 224-25, 954 P.2d 744, 746-47 (1998).

Second, Ingram contends that his jury was not selected from a representative cross-section of the community as required by the United States and Nevada constitutions. Ingram has failed to demonstrate a prima facie violation of the fair-cross-section requirement because he has not provided any evidence that any under-representation of African Americans on the panel or in the venire was due to systematic exclusion in the jury selection process. See Evans v. State, 112 Nev. 1172, 1186, 926 P.2d 265, 275 (1996) (quoting Duren v. Missouri, 439 U.S. 357, 364 (1979)); see also Williams v. State, 121 Nev. 934, 940, 125 P.3d 627, 631 (2005). Therefore, his claim lacks merit.

Third, Ingram argues that there was insufficient evidence to support the jury's verdict. After viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found the essential elements of Ingram's crimes beyond a reasonable doubt. See Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984). The jury heard testimony that Ingram sold two rare pieces of jewelry to a local pawnshop for an extremely generous price two days after the items had been stolen from a nearby residence. This evidence was sufficient for a rational trier of fact to determine that Ingram knew or should have known that the property he sold to the pawnshop was stolen. See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003) (explaining that circumstantial evidence alone may sustain a conviction).

Fourth, Ingram contends that the district court erred in denying his motion for a mistrial. Ingram alleges that a mistrial should have been declared because a State witness referenced other bad acts during direct examination. We conclude that this argument lacks merit. Ingram's defense was not unfairly prejudiced because the witness' brief

unsolicited reference to additional pieces of stolen jewelry was contradicted by a second State witness who testified that he did not locate any other stolen property. Furthermore, Ingram refused the district court's offer to issue a limiting instruction. Therefore, we conclude that the district court did not abuse its discretion. See Rice v. State, 108 Nev. 43, 44, 824 P.2d 281, 282 (1992) (affirming district court's decision where statements were unsolicited, inadvertent, and defense counsel declined the court's offer to give the jury a limiting instruction); see also Geiger v. State, 112 Nev. 938, 942, 920 P.2d 993, 995 (1996) (explaining that we review the denial of a motion for mistrial for abuse of discretion).

Fifth, Ingram contends that the habitual criminal statute violates due process because he was not provided notice of the State's intent to seek a habitual criminal enhancement before trial and because his enhanced sentence was not decided by a jury.[1] However, due process does not require the State to provide notice prior to trial, see Oyler v. Boles, 368 U.S. 448, 452 (1962), and NRS 207.016(2) specifically permits the State to file a separate habitual criminal count after a defendant has been convicted of the primary offense. Furthermore, Ingram is not entitled to have a jury decide whether his sentence should be enhanced under either the Nevada or United States constitutions. See Howard v. State, 83 Nev. 53, 57, 422 P.2d 548, 550 (1967); see also Almendarez-Torres v. United States, 523 U.S. 224, 247 (1998) (explaining that a

[1]To the extent that Ingram argues that the Equal Protection Clause supports his claim, he offers no cogent argument or relevant authority. "It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court." Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

penalty provision which simply authorizes a court to increase the sentence for a recidivist based on prior convictions is not a separate element or crime that must be proved to a jury beyond a reasonable doubt); U.S. v. Martinez-Rodriguez, 472 F.3d 1087, 1093 (9th Cir. 2007) (explaining that Apprendi v. New Jersey, 530 U.S. 466 (2000), merely cast doubt on Almendarez-Torres but does not overrule it); O'Neill v. State, 123 Nev. 9, 16, 153 P.3d 38, 43 (2007) (NRS 207.010 does not violate Apprendi). Therefore, we conclude that Ingram's due process claims lack merit.

Sixth, Ingram contends that his sentence amounts to cruel and unusual punishment. We conclude that the sentence imposed does not constitute cruel and unusual punishment because it is not so grossly disproportionate to the gravity of the offense and Ingram's history of recidivism as to shock the conscience. See Ewing v. California, 538 U.S. 11, 29 (2003) (plurality opinion); Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk